release [13] the land to the vendee. In all such cases, the vendee suffers nothing from the act of the vendor. But in these cases, specific performance is possible against the third person. The characterization of the California rule by Mr. Justice Melvin as "a harsh one" and one "not to be extended," marks, let us hope, the introduction of proper limitations upon the doctrine. The result in the Prentice case is certainly one to be commended. M. B. K.

**Vendor and Vendee—Waiver of Forfeiture by Vendor.**—The case of Stevison v. Joy [1] was an action by the holder of the legal title, against the vendee under an excutory contract of sale, to quiet the title to certain land. The contract provided that the purchase price was to be paid in installments, that the time of payment was of the essence of the contract, and that on the failure to pay any installment when due the vendor might declare those paid forfeited and refuse to convey the land. The vendee admitted that he was in default in tendering an installment when due but claims that the vendor had waived his right to declare a forfeiture for delay in making these payments, since it had been his custom to receive overdue payments, and he had thereby induced the defendant to believe that no forfeiture would be declared because of such delay. The plaintiff admits that this is a good defense as to those installments which have been received, but contends that it would be an alteration of a written contract by a parol agreement [2] to deny him the right to declare a forfeiture for failure to pay future installments on time.

The court held that "Where time is made of the essence of the contract for the payment of rent or other payments of money, and this covenant has been waived by the acceptance of rent or other moneys after they are due, and with the knowledge of the facts, such conduct will be regarded as creating such a temporary suspension of the right of forfeiture as could only be restored by giving a specific notice of an intention to enforce it." This decision is clearly in accord with the great weight of authority [3] and with the Civil Code of California, which

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[13] Galvin v. Collins (1880), 128 Mass. 525.

[1] Stevison v. Joy (1912), 44 Cal. Dec. 643.

[2] Stevison v. Joy, supra; California Civil Code, Sec. 1698; Thompson v. Gorner (1894), 104 Cal. 168, 37 Pac. 900.

[3] Cal. Civil Code, Sec. 1511, Subd. 3; Monson v. Bragdon (1895), 159 Ill. 66, 42 N. E. 383; Standard Brewing Co. v. Anderson (1908), 121 La. 935, 46 So. 926; Gunther v. New Orleans Cotton Exchange Mutual Aid Assn. (1888), 40 La. Ann. 776, 5 South. 65, 2 L. R. A. 118 (cases cited in note), 8 Am. St. Rep. 554; Barnett et al. v. Sussman (1907), 102 N. Y. Sup. 287; Robinson v. Trufant (1893), 97 Mich. 410, 56 N. W. 769; Harris v. Troup et al. (1840), 8 Paige (N. Y.) 423; Maffet v. Oregon & C. R. Co. (1905), 46 Ore. 443, 80 Pac. 489; Whiting v. Doughton (1903), 31 Wash. 327. 71 Pac. 1026; but see Lent v. B. & M. R. R. Co. (1881), 11 Neb. 186, 7 N. W. 737.

provides that "The want of performance of an obligation or the offer of performance, in whole or in part, or any delay therein, is excused . . . . when the debtor is induced not to make it, by any act of the creditor intending or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time." The code provision is but an application of the familiar principle[4] that one party can not lull another into a sense of security, either by actions or by telling him that he need not comply promptly with the time clause or other provision of a contract, and then declare a forfeiture for failure to strictly perform the contract. That this is not an alteration of the written contract by a parol agreement is shown by the fact that the vendor might have restored his right to declare a forfeiture for failure to pay the installments when due, by giving notice to the vendee that he intended to insist upon such right in the future.

An endless variety of illustrations might be given, where this rule has been applied. Thus, it is held that where an insurance company has been in the habit of giving its policy holders notice when their premiums are due, it is estopped from claiming a forfeiture if the delay in tendering a premium is caused by its failure to give the usual notice.[5] And a tender of certain bonds within the time of purchase is held to be excused where the vendor was induced by the vendee to believe that such tender would be unnecessary.[6] M. B. K.

**Wills—Bequest to Widow of Monthly Allowance from the Death of the Testator—Election.**—A right given by law must in the nature of things be superior to one given by the act of a party, and it is, therefore, a rule very generally recognized that where a right is given to a person by law and a testator confers upon the same person a benefit by will, the benefit is to be construed as something additional to that which that person would take as a matter of right. The most familiar illustration of this rule is to found in the law of dower. In the absence of statute, the provision made for the wife by the husband is deemed to be additional to the rights given her by the law.[1] And the same principle is applied in connection with a testator's devise where the community property system has supplanted the common law system of dower.[2]

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[4] Noyes v. Schlegel (1908), 9 Cal. App. 516, 99 Pac. 726.

[5] N. Y. Life Ins. Co. v. Eggleston (1877), 96 U. S. 572; Meyer v. Knickerbocker Life Ins. Co. (1878), 73 N. Y. 516; Union Cent. Life Ins. Co. v. Pottker (1878), 33 Ohio St. 459.

[6] Pierce v. Lukens (1904), 144 Cal. 397, 77 Pac. 996.

[1] This has been changed in England and many of the States of the United States by statute. 1 Woerner, American Law of Administrtion, Sec. 119 (2nd ed.)

[2] Payne v. Payne (1861), 18 Cal. 291, 301.